Edn. & P. H. (1941) Department.

SERIES.

G.O. No. 3652

9

Dated 21-8-41

[Despatch Abstract.]

License

Bellary Municipal Com

factory of Sri S.M. Basa

Cancellation & resolution

C.F. 32.

In reply, please quote number, date and short title.*

Revenue DEPARTMENT.

Received 4 - AUG 1941 Registered

From (Name) A.D.Crombie, Esquire, C.I.E., I. C.S.,

(Designation) Collector,

Post Box ____, (Station) Bellary,

Telegraphic Address ____

2 AUG 1941

To 30139

The Secretary to Government,
Local Administration Department, Madras.

D.Dis. No. 2332/41-B1, dated 30-7-41 19 .

Sir,

* Licence-Bellary Municipality-Factory of S.M.Basappay Renewal-Cancellation by the Council-Irregularity-Report-Submitted.

Enclosures ____

Spare Copies ____

The Municipal Council Bellary granted an installation license to one S.M.Basappayya under Section 250 of the District Municipalities Act in the year 1936. Since then the annual license was being renewed every year under Section 249 of the same Act. The Executive authority renewed the licence under Section 249 this year also on 24-3-41. Against the grant of this renewal license, one Mundlur Gangappa, a factory owner and an influential Councillor brought an appeal before the Council for the cancellation of the licence renewed by the Municipal Health Officer. The Council should not have entertained an appeal in the normal course of things and during the currency of the installation license granted by it under Section 250 of of the Act; but it admitted it and in resolution No.10 dated 9-4-41, copy of which is enclosed, cancelled the license granted by the Municipal Health officer without assigning any reasons therefor. This factory, no doubt, is situated in a non-industrial area but there are several other factories around it. The Tahsildar and the Revenue Divisional officer Bellary who have inspected the premises report that there is absolutely no objection to the continuance of this factory in its present locality.

According to G.O. 4054 E & P.H. dated 3-9-41 removal of the old exisiting factories from the nonindustrial area to the industrial area should be done only indirectly by refusing to renew licenses when permission is sought for the renewal or replacement of the existing machinery. Even then Government have directed that discretion should be used when removal of an existing factory to the industrial area is likely to cause undue hardship to the owner. In the present case, the objector himself was running his factory in the same building under reference for the last forty years until the building was taken on lease by Basappayya in the year 1935. The objector is an influential councillor, and out of spite he has brought undue influence on the Municipal council to ~~Squeeze~~ squeeze this man out. I request that Government may be pleased to cancel Resolution No.10 dated 9-4-41 of the Municipal Council Bellary under Section 36 of the District Municipalities Act and to direct that the renewa licence already granted should not be interefered with.

For Collector.

h.v.r31.7.

Proceedings of the Municipal Council, Bellary passed at its ordinary meeting held at 9 A.M. on Wednesday the 9th April 1941 at the Municipal Office, Bellary.

10. Appeal under Sec.322 Dist.Municipalities Act by Messrs M.Gangappa and others against the orders of the Municipal Health officer granting license to S.M.Basappiah for running a factory in the XIV Ward in a Non-industrial area.

Resolution: License granted is hereby cancelled.
Carried by majority.
M.S.Abdul Rahim Sahib only dissenting.

D.Abdul Rawoof
Chairman, M.C.,

True Copy.

Ex DHC

C No. 30139. From the Collr. of Bellary No. 2332, dt 30-7-41:
License. Bellary M-cl. Factory of
S.M. Basappayya - Cancellation of resolution

In Connection with the proposal of the Collr. of Bellary, the points which seem to require consideration are:
1) Whether the action of the Council in having passed its resolution No. 10 dt 9-4-41 is irregular, and
2) Whether the provisions of Sec. 36 of the M.D.M. Act can be availed of.

2 Point (1) alone

S.M. Basappayya was granted the annual license for his factory required under Sec. 249 of the M.D.M. Act for the year 1941-42 on 24-3-41. It is stated that the license was renewed by the M.H.G and not by the Commr. Perhaps the M.H.G. was exercising the powers of the Ex. Authority at the time. An appeal was preferred to the Council by Nundalur Gangappa & others against the said grant of license. The appeal was preferred within 30 days and it was therefore in time. It will appear that under Sec. 322 (1)(c) of the M.D.M. Act an appeal will lie against any order of the

Ex. Authority granting or refusing a license. It need not therefore be that the appeal should be preferred only by the Concerned party to the license. According to para 4 of the instructions issued with G.O No. 4054 Pt1 dt 3-9-40, the local Authority has to Consider the case of each factory situated Outside industrial areas before license is renewed. It is not clear whether the Council had Considered the question of renewal of license for this factory before the license was renewed by the Ex. Authority. The interference in the matter by the Council as a result of an appeal to it, does not appear to be irregular or in excess of the powers Conferred on it. Regarding para 3. Point (2) above

The resolution will not fall under Clause (C) of Sec. 36 (1) (ii) of the D.M. Act. It does not appear that whether clauses (a) or (b) of the above section Can be availed of unless it is shown Considered that the resolution is either Illegal or in excess of the powers of the Council.

4. Legal may be Consulted on the above points

This is seems to be a case of abuse of power by the Municipal Council on account of

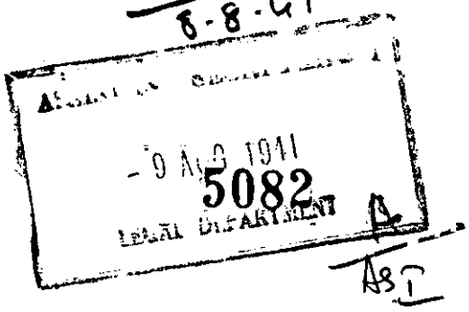
5/8/41

local politics. In a similar case (Negapatam timber depot) Legal advised that the resoln of the bl could be cancelled & it was cancelled. This may be sent to Legal for remarks with draft G.O.

WS
7/8.
Legal.

Mr. Jacob with
Legal
8/8.

Ex. Ph wo
30139-1 # D41
5-8-41



ABT

Legal Department

(T) The present case is clearly distinguishable from the case disposed of in G.O.No. 2057 E.P.H. ted 17th May 1941. In the case dealt with in that G.O., the question was whether the Council interfered with the power of the Commissioner to grant or refuse to grant a licence in the first instance. This Department advised that if the resolution passed by the Council was regarded as mandatory, it would be beyond the powers of the council and might therefore be cancelled under section 36 (1) (b) of the District Municipalities Act. In the present case however, the Council has passed orders, in the regular course, on an appeal presented to it under section 322 (1) (c). Under this section, an appeal lies to the council from any order of the executive authority granting or refusing a licence or permission. It cannot

parag.3, p.18 of(T)

therefore be said that the resolution passed by the Council was, on the face of it, irregular or in excess of the powers conferred on the Council. The mere fact that permission was accorded for the erection of the factory under section 250 does not entitle the party, as a matter of course, to the annual licence necessary under section 249. It is open to the municipal council to refuse to renew the annual licence if good and sufficient grounds exist for such refusal - See paragraph 4 at page 3 of G.O. No.4054 Public Health (B) dated 3rd September 1940. But if, as stated by the Collector, other factories in the neighbourhood have been allowed to continue and this factory has been singled out for special unfavourable treatment by the Council owing to the undue influence brought to bear upon it, the action of the municipal council cannot be justified. It will prima facie amount to an abuse of power which will be in excess of the powers conferred on the municipal council, and action under section 36 (1)(b) of the District Municipalities Act may be justified.

A, p.1, C f

B, p.1, C f.

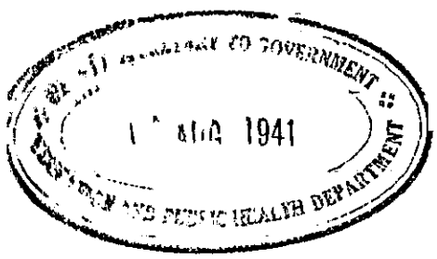
K.N.
14/8/41

The Collector reports that there are several other factories working in the same locality. The appellant before the municipal council was himself running a factory in the identical building for many years until he was dislodged by Basappayya who took a lease of the building in 1935. Permission was granted by the council to Basappayya to install the necessary machinery in the building and he was also given licences under section 249 from year to year. The council has cancelled the renewed licence for the current year granted to him at the instance of his defeated rival who is an influential councillor.

The Collector's report shows that Basappayya was singled out for the special attention of the council on account of spite and in order to squeeze him out of business. In the circumstances the inference that the council abused its powers is irresistible. In abusing its powers the council may well be said to have exceeded its powers and consequently the resolution may be cancelled under section 36 (1)(b) of the D.M.Act.

15/8/41

Legal 5082-1
15-8-41



E & PH

A draft order is placed below for

21/8.

a/g.

32030

18.8.41

33/245

ExPH

C No. 30139. From the Coller of Bellary No. 2332 Dt 30.7.41

Order No 3652 PH Dt 21.8.41

License - Bellary Municipal - Factory of Sri S. M. Basappayya Cancellation of extention

The Coller of Bellary reports that one S M. Basappay Who owns a factory in the XIV ward of the Bellary Municipality was granted a license under Sec. 245 of the M-D-M. Act for running his factory during 1941-42 and that on an appeal preferred by Mundlur Gangappa, a factory owner and an influential Councillor, the Bella. Municipal Council, in its resolution No. 10 Dt 9-6-41 has cancelled the license granted by the Ex. Authority. He also states that there are several other factories around the factory of S.M. Bappayya And that the objector (Mundlur Gangappa) out of spite, has

brought undue influence on the
Council Chairman to squeeze
Basappappayya out of business.

2 In the circumstances, the
Govt. consider that the Council
in passing the resolution referred to above, has abused
~~has abused~~ the powers vested
in it and ~~has thereby~~ has passed the
~~resolution which~~ exceeded its
powers. Under the proviso
to Sec. 36(1) of the M.D.M. Act, 1920,
the Govt. hereby call upon
the Bellary Mc Council to show cause
within a fortnight from the
date of receipt of this order why
its resolution No 10, Dt 9-4-41
should not be cancelled.

6
98
18.8.41

21/8.

To the Commr Bellary Mg
this the
Collr of Bellary.